

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**vs.**

**JOAQUIN ANDRADE,**

**Defendant.**

**CASE NO. 8:05CR115**

**MEMORANDUM  
AND ORDER**

This matter is before the Court on the Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (Filing No. 40) filed by the Defendant, Joaquin Andrade. Rule 4(b) of the *Rules Governing Section 2255 Proceedings for the United States District Courts* requires initial review of a § 2255 motion, and describes the initial review process:

The judge who receives the motion must promptly examine it. If it plainly appears from the motion, any attached exhibits, and the record of prior proceedings that the moving party is not entitled to relief, the judge must dismiss the motion and direct the clerk to notify the moving party. If the motion is not dismissed, the judge must order the United States attorney to file an answer, motion, or other response within a fixed time, or to take other action the judge may order.

On July 10, 2006, Andrade was sentenced to 60 months imprisonment and 5 years supervised release. (Filing No. 35.) The Judgment was filed on July 12, 2006. (Filing No. 35.) Andrade did not file a direct appeal. His § 2255 motion was filed on July 7, 2008. (Filing No. 40.)

Andrade had one year from the date his conviction became final to file his § 2255 motion. 28 U.S.C. § 2255(f). Because his § 2255 motion was filed more than one year after that date, it appears plainly from the face of the § 2255 motion and the record that he is not entitled to relief.

IT IS ORDERED:

1. The Court has completed the initial review of the Defendant's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (Filing No. 40);

2. The Defendant's § 2255 motion (Filing No. 40) is summarily denied;

3. A separate Judgment will be issued denying the § 2255 motion; and

4. The Clerk is directed to mail a copy of this Memorandum and Order to the Defendant at his last known address.

DATED this 12<sup>th</sup> day of March, 2009.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge